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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 002481

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DOE FOR CAROLYN GAY

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TAGS: [PGOV](#) [KDEM](#) [NI](#)

SUBJECT: BUHARI'S LAWYER REMAINS CONFIDENT

REF: ABUJA 1749

Classified By: Political Counselor Walter Pflaumer for reasons 1.4. (b & d).

¶1. (C) SUMMARY: Mike Ahamba (strictly protect), lead counsel for General Buhari, remains confident that the presidential election will be annulled. He said INEC was "incredibly sloppy" and left a paper trail of fraudulent results sheets at all stages of vote tabulation. Ahamba believes that INEC's own documents will be sufficient proof for the tribunal to throw out the presidential results in at least 14 states, compelling the court to order the re-run of the election. He expects the tribunal hearings to wrap up in December and a verdict to be issued in early 2008. END SUMMARY.

¶2. (C) Poloffs met with Senior Advocate of Nigeria (SAN) Chief Mike Ahamba on November 20, the same day he closed his case before the presidential election tribunal at the Court of Appeals in Abuja. Ahamba also represented General Buhari during his challenge of the 2003 presidential election results. Ahamba claims to have learned his lessons from ¶2003. He said that during the 2003 election challenge, his case relied too heavily on legal arguments rather than facts. This time, Ahamba described his submission as "80% fact, 20% law." Though he told Poloffs that the 2006 Electoral Act sets an incredibly high burden for petitioners to meet, Ahamba was confident that he had avoided the "traps" laid by the government and asserted that he had used those traps to his advantage.

State-level Precedents Important

¶3. (C) Ahamba said that in 2003, only one gubernatorial race was overturned by the tribunals, and in that case it took the petitioner Peter Obi (APGA, Anambra state) nearly 3 years to conclude the appeals process and take office. The trend is quite different in 2007. Two of the 2007 gubernatorial elections have been changed by the Supreme Court (Anambra, Rivers) and three others have been annulled at tribunal with new elections ordered within 90 days (Kogi, Kebbi, Adamawa). Chief Ahamba thinks it is important that both judges and the public have now seen that it is possible for an election to be overturned. Ahamba anticipates that 2-3 additional gubernatorial races may be overturned at tribunal.

INEC Documents the Heart of the Case

¶4. (C) According to Ahamba, the Independent National Electoral Commission (INEC) was "incredibly sloppy" and left a paper trail of obviously fraudulent results sheets at all stages of vote tabulation. As Buhari's team reviewed the INEC documents, they found results sheets that had been signed and dated April 20 (the day before the election). They found numerous cases of ward level results that were signed and certified days after the local government area (LGA) results had been signed and certified, or LGA results dated after state level results. Ahamba also said that two different sets of national results had been signed and certified by INEC Chairman Iwu. Ahamba's argument before the tribunal is that it is not possible for results from higher levels of collation and tabulation to be certified before those at lower levels and that this pattern of inconsistent dates is clear evidence of fraud.

¶5. (C) Ahamba is confident that this paper trail of pre-dated and inconsistent results will compel the court to throw out the presidential election results in many states. His goal is to prove the presidential results were invalid in 29 states, but Ahamba reports that he only needs the court to annul the election results in 14 states in order to invalidate the entire presidential election. (Note: To become President, the Nigerian constitution requires that a candidate receive both the highest number of total votes AND at least 25% of the votes in at least 2/3 of Nigeria's 36 states and the Federal Capital Territory. If election results are thrown out in 14 states, it will not be possible for any candidate to have obtained the requisite percentage in 2/3 of the states, invalidating the election. End Note.)

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Speedy Trial without Witness Testimony

¶5. (C) The lawyers for all sides at the presidential tribunal agreed to forego oral testimony by witnesses and instead to enter depositions into the court record. This reliance on documents will greatly expedite the tribunal process, as no witnesses will testify or be cross-examined in the courtroom. Ahamba notes that the government will not be able to use witnesses to rebut or explain the many INEC documents in the court record which appear obviously fraudulent. The agreement not to call witnesses therefore works in Buhari's favor, according to Ahamba, as "it is the government that needs to explain itself." He contends that the tribunal will not be able to ignore the overwhelming documentary evidence of election fraud, as the judges risk being mocked by the public if they rule in a way that is contrary to known facts.

COMMENT

¶6. (C) Though the government cannot call witnesses to explain INEC documents which appear contradictory or fraudulent, it is by no means clear how much weight the court will give to these problematic documents. The judges may decide that the inconsistent or pre-dated results sheets are simply clerical errors and therefore did not "affect substantially the result of the election" as required by the Electoral Act to invalidate an election. An INEC spokesman recently told the Nigerian media that many of the documents submitted by Buhari's legal team are "forgeries" which have been altered to discredit INEC. It is unclear how the court will handle this accusation, as the documents are all marked as "certified true copies" and Buhari's legal team maintains that they were at all times monitored by INEC staff as they inspected and copied the documents. The fact that INEC is now attempting to publicly discredit the documents in Buhari's submission may be a sign that INEC is growing nervous about the outcome of the tribunal. End Comment.
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